

ASSEMBLY BILL

No. 2597

Introduced by Assembly Member Bill Berryhill

February 19, 2010

An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2597, as introduced, Bill Berryhill. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in certain conduct.

This bill would make technical, nonsubstantive changes in those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11713.3 of the Vehicle Code is amended
- 2 to read:
- 3 11713.3. It is unlawful and a violation of this code ~~for any~~ for
- 4 a manufacturer, manufacturer branch, distributor, or distributor
- 5 branch licensed under this code to do any of the following:

1 (a) To refuse or fail to deliver in reasonable quantities and within
2 a reasonable time after receipt of an order from a dealer having a
3 franchise for the retail sale of ~~any~~ *a* new vehicle sold or distributed
4 by the manufacturer or ~~distributor~~, ~~any~~ *distributor* *a* new vehicle
5 or parts or accessories to new vehicles as are covered by the
6 franchise, if the vehicle, parts, or accessories are publicly advertised
7 as being available for delivery or actually being delivered. This
8 subdivision is not violated, however, if the failure is caused by
9 acts or causes beyond the control of the manufacturer, manufacturer
10 branch, distributor, or distributor branch.

11 (b) To prevent or require, or attempt to prevent or require, by
12 contract or otherwise, ~~any~~ *a* change in the capital structure of a
13 dealership or the means by or through which the dealer finances
14 the operation of the dealership, if the dealer at all times meets any
15 reasonable capital standards agreed to by the dealer and the
16 manufacturer or distributor, and if a change in capital structure
17 does not cause a change in the principal management or have the
18 effect of a sale of the franchise without the consent of the
19 manufacturer or distributor.

20 (c) To prevent or require, or attempt to prevent or require, a
21 dealer to change the executive management of a dealership, other
22 than the principal dealership operator or operators, if the franchise
23 was granted to the dealer in reliance upon the personal
24 qualifications of that person.

25 (d) (1) Except as provided in subdivision (t), to prevent or
26 require, or attempt to prevent or require, by contract or otherwise,
27 ~~any~~ *a* dealer, or ~~any~~ *an* officer, partner, or stockholder of ~~any~~ *a*
28 dealership, the sale or transfer of any part of the interest of any of
29 them to any other person. No dealer, officer, partner, or stockholder
30 shall, however, have the right to sell, transfer, or assign the
31 franchise, or any right thereunder, without the consent of the
32 manufacturer or distributor except that the consent shall not be
33 unreasonably withheld.

34 (2) (A) For the transferring franchisee to fail, prior to the sale,
35 transfer, or assignment of a franchisee or the sale, assignment, or
36 transfer of all, or substantially all, of the assets of the franchised
37 business or a controlling interest in the franchised business to
38 another person, to notify the manufacturer or distributor of the
39 franchisee's decision to sell, transfer, or assign the franchise. The
40 notice shall be in writing and shall include all of the following:

1 (i) The proposed transferee's name and address.

2 (ii) A copy of all of the agreements relating to the sale,
3 assignment, or transfer of the franchised business or its assets.

4 (iii) The proposed transferee's application for approval to
5 become the successor franchisee. The application shall include
6 forms and related information generally utilized by the
7 manufacturer or distributor in reviewing prospective franchisees;
8 *franchisees* if those forms are readily made available to existing
9 franchisees. As soon as practicable after receipt of the proposed
10 transferee's application, the manufacturer or distributor shall notify
11 the franchisee and the proposed transferee of any information
12 needed to make the application complete.

13 (B) For the manufacturer or distributor, to fail, on or before 60
14 days after the receipt of all of the information required pursuant
15 to subparagraph (A), or as extended by a written agreement
16 between the manufacturer or distributor and the franchisee, to
17 notify the franchisee of the approval or the disapproval of the sale,
18 transfer, or assignment of the franchise. The notice shall be in
19 writing and shall be personally served or sent by certified mail,
20 return receipt requested, or by guaranteed overnight delivery
21 service that provides verification of delivery and shall be directed
22 to the franchisee. Any proposed sale, assignment, or transfer shall
23 be deemed approved, unless disapproved by the franchisor in the
24 manner provided by this subdivision. If the proposed sale,
25 assignment, or transfer is disapproved, the franchisor shall include
26 in the notice of disapproval a statement setting forth the reasons
27 for the disapproval.

28 (3) In ~~any~~ *an* action in which the manufacturer's or distributor's
29 withholding of consent under this subdivision or subdivision (e)
30 is an issue, whether the withholding of consent was unreasonable
31 is a question of fact requiring *the* consideration of all the existing
32 circumstances.

33 (e) To prevent, or attempt to prevent, a dealer from receiving
34 fair and reasonable compensation for the value of the franchised
35 business. There shall be no transfer or assignment of the dealer's
36 franchise without the consent of the manufacturer or distributor,
37 which consent shall not be unreasonably withheld or conditioned
38 upon the release, assignment, novation, waiver, estoppel, or
39 modification of ~~any~~ *a* claim or defense by the dealer.

1 (f) To obtain money, goods, services, or any other benefit from
2 ~~any other~~ a person with whom the dealer does business, on account
3 of, or in relation to, the transaction between the dealer and that
4 other person, other than for compensation for services rendered,
5 unless the benefit is promptly accounted for, and transmitted to,
6 the dealer.

7 (g) To require a dealer to prospectively assent to a release,
8 assignment, novation, waiver, or estoppel that would relieve ~~any~~
9 a person from liability to be imposed by this article or to require
10 ~~any~~ a controversy between a dealer and a manufacturer, distributor,
11 or representative, to be referred to ~~any~~ a person other than the
12 board, if the referral would be binding on the dealer. This
13 subdivision does not, however, prohibit arbitration before an
14 independent arbitrator.

15 (h) To increase prices of motor vehicles that the dealer had
16 ordered for private retail consumers prior to the dealer's receipt
17 of the written official price increase notification. A sales contract
18 signed by a private retail consumer is evidence of ~~each such~~ *this*
19 order. In the event of manufacturer price reductions, the amount
20 of the reduction received by a dealer shall be passed on to the
21 private retail consumer by the dealer if the retail price was
22 negotiated on the basis of the previous higher price to the dealer.
23 Price reductions apply to all vehicles in the dealer's inventory that
24 were subject to the price reduction. Price differences applicable
25 to new model or series motor vehicles at the time of the
26 introduction of *the* new models or series shall not be considered
27 a price increase or price decrease. This subdivision does not apply
28 to price changes caused by either of the following:

29 (1) The addition to a motor vehicle of required or optional
30 equipment pursuant to state or federal law.

31 (2) Revaluation of the United States dollar in the case of a
32 foreign-make vehicle.

33 (i) To fail to pay to a dealer, within a reasonable time following
34 receipt of a valid claim *made* by ~~a dealer thereof, any the dealer,~~
35 a payment agreed to be made by the manufacturer or distributor
36 to the dealer by reason of the fact that a new vehicle of a prior year
37 model is in the dealer's inventory at the time of introduction of
38 new model vehicles.

39 (j) To deny the widow or heirs designated by a deceased owner
40 of a ~~dealership,~~ *dealership* the opportunity to participate in the

1 ownership of the dealership or successor dealership under a valid
2 franchise for a reasonable time after the death of the owner.

3 (k) To offer ~~any~~ refunds or other types of inducements to ~~any~~
4 a person for the purchase of new motor vehicles of a certain
5 line-make to be sold to the state or ~~any~~ a political subdivision
6 ~~thereof of the state~~ without making the same offer to all other
7 dealers in the same line-make within the relevant market area.

8 (l) To modify, replace, enter into, relocate, ~~terminate~~ terminate,
9 or refuse to renew a franchise in violation of Article 4 (commencing
10 with Section 3060) of Chapter 6 of Division 2.

11 (m) To employ a person as a representative who has not been
12 licensed pursuant to Article 3 (commencing with Section 11900)
13 of Chapter 4 of Division 5.

14 (n) To deny any dealer the right of free association with any
15 other dealer for ~~any~~ a lawful purpose.

16 (o) (1) To compete with a dealer in the same line-make
17 operating under an agreement or franchise from a manufacturer
18 or distributor in the relevant market area.

19 (2) A manufacturer, branch, or distributor or ~~any~~ an entity that
20 controls or is controlled ~~by~~, by a manufacturer, branch, or
21 distributor, shall ~~not, however,~~ not be deemed to be competing in
22 the following limited circumstances:

23 (A) Owning or operating a dealership for a temporary period,
24 not to exceed one year. However, after a showing of good cause
25 by a manufacturer, branch, or distributor that it needs additional
26 time to operate a dealership in preparation for sale to a successor
27 independent franchisee, the board may extend the time period. The
28 board shall extend the time period until December 31, 2002, for
29 ~~any~~ a manufacturer that meets all of the following requirements:

30 (i) The manufacturer has no more than 25 franchisees in the
31 state and those franchisees collectively operate dealership facilities
32 in at least 15 counties of the state.

33 (ii) All of the dealership facilities operated by the manufacturer's
34 franchisees in the state trade exclusively in the manufacturer's
35 line-make.

36 (iii) No fewer than one-half of the manufacturer's franchisees
37 in the state own and operate two or more dealership facilities in
38 their assigned areas of responsibility.

39 (iv) The manufacturer holds a temporary ownership interest in
40 no more than two dealerships in the state that are located in the

1 relevant market area of any other franchisee of the same line-make
2 not owned, in whole or part, by the manufacturer.

3 (B) Owning an interest in a dealer as part of a bona fide dealer
4 development program that satisfies all of the following
5 requirements:

6 (i) The sole purpose of the program is to make franchises
7 available to persons lacking capital, training, business experience,
8 or other qualities ordinarily required of prospective franchisees
9 and the dealer development candidate is an individual who is
10 unable to acquire the franchise without assistance of the program.

11 (ii) The dealer development candidate has made a significant
12 investment subject to loss in the franchised business of the dealer.

13 (iii) The program requires the dealer development candidate to
14 manage the day-to-day operations and business affairs of the dealer
15 and to acquire, within a reasonable time and on reasonable terms
16 and conditions, beneficial ownership and control of a majority
17 interest in the dealer and disassociation of ~~any~~ a direct or indirect
18 ownership or control by the manufacturer, branch, or distributor.

19 (C) Owning a wholly owned subsidiary corporation of a
20 distributor that sells motor vehicles at retail, if, for at least three
21 years prior to January 1, 1973, the subsidiary corporation has been
22 a wholly owned subsidiary of the distributor and engaged in the
23 sale of vehicles at retail.

24 (3) (A) ~~Every~~ A manufacturer, branch, and distributor that
25 owns or operates a dealership in the manner described in
26 subparagraph (A) of paragraph (2) shall give written notice to the
27 board, within 10 days, each time it commences or terminates
28 operation of a dealership and each time it acquires or divests itself
29 of an ownership interest.

30 (B) ~~Every~~ A manufacturer, branch, and distributor that owns
31 an interest in a dealer in the manner described in subparagraph (B)
32 of paragraph (2) shall give written notice to the board, annually,
33 of the name and location of each dealer in which it has an
34 ownership interest.

35 (p) To unfairly discriminate among its franchisees with respect
36 to warranty reimbursement or authority granted to its franchisees
37 to make warranty adjustments with retail customers.

38 (q) To sell vehicles to persons not licensed under this chapter
39 for resale.

1 (r) To fail to affix an identification number to ~~any~~ a park trailer,
2 as described in Section 18009.3 of the Health and Safety Code,
3 that is manufactured on or after January 1, 1987, and that does not
4 clearly identify the unit as a park trailer to the department. The
5 configuration of the identification number shall be approved by
6 the department.

7 (s) To dishonor a warranty, rebate, or other incentive offered
8 to the public or a dealer in connection with the retail sale of a new
9 motor vehicle, based solely upon the fact that an autobroker
10 arranged or negotiated the sale. This subdivision ~~shall~~ *does* not
11 prohibit the disallowance of that rebate or incentive if the purchaser
12 or dealer is ineligible to receive the rebate or incentive pursuant
13 to any other term or condition of a rebate or incentive program.

14 (t) To exercise a right of first refusal or any other right requiring
15 a franchisee or ~~any owner thereof~~ *of a franchise* to sell, transfer,
16 or assign to the franchisor, or to ~~any~~ a nominee of the franchisor,
17 all or ~~any~~ a material part of the franchised business or of the assets
18 ~~thereof of that business~~ unless all of the following requirements
19 are met:

20 (1) The franchise authorizes the franchisor to exercise a right
21 of first refusal to acquire the franchised business or assets ~~thereof~~
22 *of that business* in the event of a proposed sale, transfer, or
23 assignment.

24 (2) The franchisor gives written notice of its exercise of the
25 right of first refusal no later than 45 days after the franchisor
26 receives all of the information required pursuant to subparagraph
27 (A) of paragraph (2) of subdivision (d).

28 (3) The sale, transfer, or assignment being proposed relates to
29 not less than all or substantially all of the assets of the franchised
30 business or to a controlling interest in the franchised business.

31 (4) The proposed transferee is neither a family member of an
32 owner of the franchised business, nor a managerial employee of
33 the franchisee owning 15 percent or more of the franchised
34 business, nor a corporation, partnership, or other legal entity owned
35 by the existing owners of the franchised business. For purposes of
36 this paragraph, a “family member” means the spouse of an owner
37 of the franchised business, the child, grandchild, brother, sister,
38 or parent of an owner, or a spouse of one of those family members.
39 ~~Nothing contained in this~~ *This paragraph limits does not limit the*

1 rights of the franchisor to disapprove a proposed transferee as
2 provided in subdivision (d).

3 (5) Upon the franchisor's exercise of the right of first refusal,
4 the consideration paid by the franchisor to the franchisee and
5 owners of the franchised business shall equal or exceed all
6 consideration that each of them were to have received under the
7 terms of, or in connection with, the proposed sale, assignment, or
8 transfer, and the franchisor shall comply with all the terms and
9 conditions of the agreement or agreements to sell, transfer, or
10 assign the franchised business.

11 (6) The franchisor shall reimburse the proposed transferee for
12 ~~any~~ expenses paid or incurred by the proposed transferee in
13 evaluating, investigating, and negotiating the proposed transfer to
14 the extent those expenses do not exceed the usual, customary, and
15 reasonable fees charged for similar work done in the area in which
16 the franchised business is located. These expenses include, but are
17 not limited to, legal and accounting ~~expenses~~, *expenses* and
18 expenses incurred for title reports and environmental or other
19 investigations of ~~any~~ real property on which the franchisee's
20 operations are conducted. The proposed transferee shall provide
21 the franchisor *with* a written itemization of those ~~expenses~~,
22 *expenses* and a copy of all nonprivileged reports and studies for
23 which expenses were incurred, if any, within 30 days of the
24 proposed transferee's receipt of a written request from the
25 franchisor for that accounting. The franchisor shall make payment
26 within 30 days of exercising the right of first refusal.

27 (u) (1) To unfairly discriminate in favor of any dealership
28 owned or controlled, in whole or part, by a manufacturer or
29 distributor or an entity that controls or is controlled by the
30 manufacturer or distributor. Unfair discrimination includes, but is
31 not limited to, the following:

32 (A) The furnishing to ~~any~~ *a* franchisee or dealer that is owned
33 or controlled, in whole or part, by a manufacturer, branch, or
34 distributor of any of the following:

35 (i) ~~Any~~ *A* vehicle that is not made available to each franchisee
36 pursuant to a reasonable allocation formula that is applied
37 uniformly, and ~~any~~ *a* part or accessory that is not made available
38 to all franchisees on an equal basis when there is no reasonable
39 allocation formula that is applied uniformly.

(ii) ~~Any~~ A vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including the time of delivery after the placement of an order. Differences in delivery terms due to geographic distances or other factors beyond the control of the manufacturer, branch, or distributor shall not constitute unfair competition.

(iii) ~~Any information~~ *Information* obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of ~~any~~ a franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of ~~any~~ a dealer customer, and any other information which, if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor, would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest, unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer.

(2) ~~Nothing in this~~ *This subdivision shall be interpreted to does not* prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) (1) To access, modify, or extract information from a confidential dealer computer record, as defined in Section 11713.25, without obtaining the prior written consent of the dealer and without maintaining administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information.

(2) Paragraph (1) does not limit a duty that a dealer may have to safeguard the security and privacy of records maintained by the dealer.

- 1 (w) (1) To use electronic, contractual, or other means to prevent
2 or interfere with any of the following:
- 3 (A) The lawful efforts of a dealer to comply with federal and
4 state data security and privacy laws.
- 5 (B) The ability of a dealer to do either of the following:
- 6 (i) Ensure that specific data accessed from the dealer's computer
7 system is within the scope of consent specified in subdivision (v).
- 8 (ii) Monitor specific data accessed from or written to the dealer's
9 computer system.
- 10 (2) Paragraph (1) does not limit a duty that a dealer may have
11 to safeguard the security and privacy of records maintained by the
12 dealer.
- 13 (x) As used in this section, "area of responsibility" is a
14 geographic area specified in a franchise that is used by the
15 franchisor for the purpose of evaluating the franchisee's
16 performance of its sales and service obligations.